

KINGSLEY NAPLEY

WHEN IT MATTERS MOST

IMMIGRATION

Fly In Fly Out - Switzerland

Transcript

Hello everyone. My name is Ilda and I'm a partner in the immigration team at Kingsley Napley. I'm here today with Nina from Blue Lake Legal, a swiss immigration attorney specializing in immigration law in Switzerland and my colleague Jessica, a partner in our Regulatory team.

The purpose of today is to talk about the fact that we have lawyers traveling into Europe on British passports to give advice to their clients on a fly in, fly out basis, a so-called FIFO.

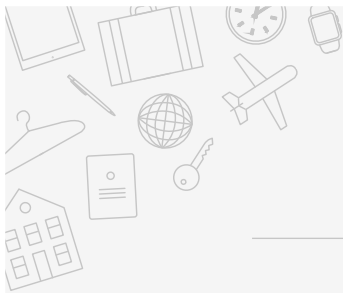
So with that in mind, I have a few questions that I would like to ask Nina.

So, Nina, the first question that I have for you is do you have any top tips for UK law firms that needs to save lawyers into Switzerland on a short term trip basis?

Hello. Thank you for having me on. In terms of considerations to be made before sending somebody into Switzerland and out again on a short term trip, tip number one would be try and plan as early as possible and see if you can get quite specific on how long somebody is going to be in Switzerland, where they are going to travel to and what they are going to be doing.

Once you have these three pieces of information, you can then categorize which steps need to be taken in order for that person to be able to travel without any hindrance going in or out.

Thank you. The second question I have for you, assuming this british national travelling into Switzerland is visiting their clients and won't be providing any type of advice. What is the maximum amount of time that they can spend in Switzerland as a visitor?



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There's no sort of hard number of days or hours that you would consider. It really much more depends on the activity performed while in the country. So, you would have a look at the activity and see if it qualifies as a business meeting or if that qualifies as gainful employment does work.

Because there is no need to obtain a visa to enter Switzerland as a UK national also for the short trips, you're not likely going to be asked at the border exactly what's the duration and the nature is going to be.

But if you know beforehand, as mentioned earlier, this will determine whether an online registration similar to posted work, a notification needs to be made or it really truly is just activity which can be summarized under the meeting category and therefore will not require any kind of prior action.

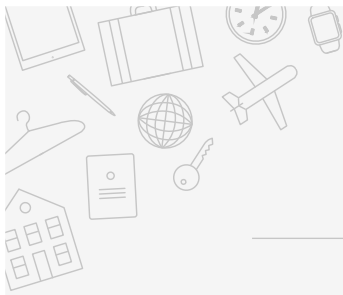
Thank you. So if it's just a simple case of a business meeting, is there a duration of time they can spend in Switzerland, presumably as a visitor?

Not necessarily. What we would then say, however, is the shorter the better. If somebody is over there for several weeks and claims this is a business meeting, it becomes more difficult to argue.

For those who are non EU nationals and from further afield and do require visas and this I'm just telling you as an example, you would then have visas usually for a week or two, but in some longer cases also up to two months.

So it's not easy to say that this is the amount of days and everything over that is quite clearly work and no longer a business meeting, which is why I keep sort of harking back on the activity.

As soon as you start opening up laptops, being on the phone, being on work activity at the side of the business meeting, it already veers into work activity rather than just coming in and having the meeting and then leaving again.



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That's very helpful. In terms of if someone, for example this british national traveling to Switzerland, you mentioned that the pre-arrival visa type, but if it's a standard visitor, just a business meeting, do they get a visitor visa on arrival at the airport or how does that work in practice?

No. You would just enter the country with your passport and there's no specific other document that you receive.

If in advance you have decided, well, actually it is work activity, you would go through the online registration system prior to arriving in Switzerland, in which case you get a confirmation of that registration and that you do have in hand to show anybody.

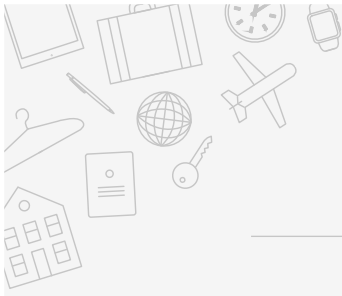
But if you are truly just coming for a business meeting, you can enter the country, have that meeting and exit again without any kind of further paperwork involved.

Okay. Thank you. I think you alluded to this, but if the position is that they're going to give chargeable advice, in other words to go and see a client with the view to give advice that's going to be chargeable and maybe perhaps prepare legal documentation in readiness for a trial, a hearing, whatever the case might be, even if it's only for a few days from what you've previously described, it sounds like it would be considered as productive work. So what would the position be then?

So in that case, you would have a look at the duration as well. So if the assigning entity, so if the employer in the UK is assigning somebody for up to maximum eight days per calendar year, no action needs to be taken.

However, this is per assigning entity. So if they've assigned somebody already, then the next person cannot also have eight days as well.

But per calendar year, eight days can be used kind of for free without needing to do anything. Anything above that needs online registration where you would register



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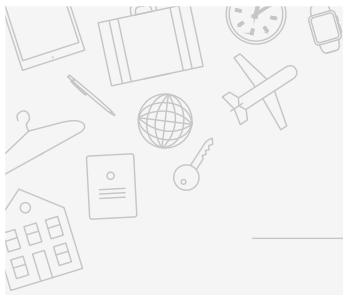
somebody via the online registration system at least eight days before the first intended working day in Switzerland. You receive a confirmation of that registration within 2 to 3 business days prior to leaving as well, and then have that confirmation in hand or on email, so to speak, when entering the country and then leaving again. So they do have a record of who is there, who is working, what the salary is per hour, and that the expenses are being paid by the employer for that duration.

As a UK national, you would not need a visa on top of that. It is enough to be a UK national and be part of that online registration system which the UK and Switzerland have decided will continue until the end of 2025 for now.

Okay, thank you. So what happens with frequent travelers? So I know that there will be a lot of UK lawyers who need to travel into Switzerland on a frequent basis. Maybe they've worked on a project and they need to see the client frequently, perhaps once a week, will that trigger any cause for concern or is it, as you say, the completion of the form at least a few days before arrival?

So the online registration system is capped in total at 90 days per calendar year for the assigning entity. So within that, the assigning entity can assign one person or five persons per day and it will just count as one day for the employer. For the employee, it's also 90 days only. That tends to clash very rarely only if the employee switches employer and then gets assigned again, so to speak. But that is a very flexible way of coming in and out.

The eight days that I mentioned earlier, which you have to register in advance, is only for the first registration on that specific location. If the same person or other people from that entity are being assigned to that location later on, within the next three months, you can also register with only one days notice in advance. It becomes very flexible to use. All in all, the person is not allowed to be longer in the country than 90 days either without registering for residence at some point or requiring a different work permit approval type. So if you go beyond the 90 days and somebody is going to be here for longer, if they manage to fulfill the assignment within 120 day frame within 12 months, we could apply for 120 day permit.



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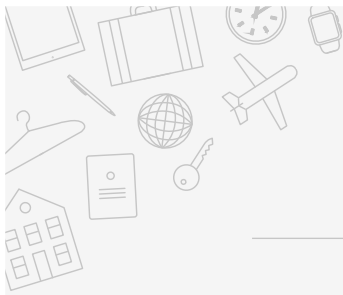
It is equally very flexible, even more so in terms of not having to let the authorities know in advance which exact dates the person is going to be here. But it takes a little bit longer to obtain than the online registration, which as I mentioned, two or three days after registering, you will already receive the confirmation, whereas 120 day permit actually involves submitting a physical application to the authorities and depending on the location that it is meant for, it may take 2 to 3 weeks to come through or 4 to 6 weeks to come through.

Thank you. So the question I have for you then is, you touched on that the World Commission, the 90 days and 120 days, but if work permission is required, how long in advance should that be applied for? And is it possible that someone can enter the country prior to the application being considered?

So as mentioned, the duration of treatment for an official work permit application depends on the location. So some of them are faster, some are slower. As to are you allowed to be in the country as a tourist? Yes, easily, of course. Already here working only if you have the correct status for that, stay already. So if you're on the online registration system, for example, and you're heading towards those 90 days that are going to be expiring, then you can already apply for 120 day permit while still being here on the days that you had registered online. That is fine. We usually, in that case, in the application, let the authorities know the person has already been registered for so-and-so many days this year by the online registration system.

We will also make a note of the registration number for them so that they can see and if that same person has already had online registration days, what the authorities will usually do, they will grant 120 days, but they will subtract the days that the person has already spent in the country.

So you you can't sort of, you know, add them on to a point where in theory you should be a resident of the country. But because you have got several versions of online registration and permit behind each other, you would be exempt. That's not the case.



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But otherwise, if you have not yet entered the country or you are going for a 20 day permit from the start, you will have to await the work permit approval before entering the country with the purpose of working here.

Thank you Nina.

Just posted brexit, a few years on, is this working to stay in practice?

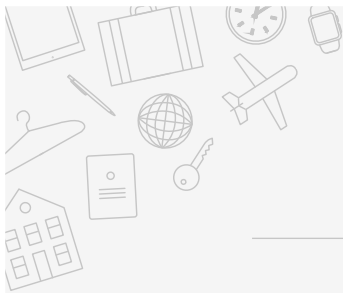
Yes. The online registration system has just simply continued, so there's not a change on that part at all. The same is true for the 120 day permit, where the nationality does not make a difference. As opposed to other non EU, UK nationals do not require a visa, so there is a sort of a simplified or shortened version for immigration as opposed to others.

On the terms of the quota based work permits and this is for anybody who's staying longer than four months per year, it turns into a quota based permit which includes residence in the country as well. Those currently are also still on a separate quota for UK nationals then everybody else.

At some point we expect it to be rolled into the into the big number of quota we have for non EU nationals. But currently there is still a separate pot so to speak, for UK nationals. So those processes tend to be a bit more straightforward let's say, than other non EU after nationals.

Thank you very much. You'll be pleased to know those were the only questions I have for you, so I turn now to my colleague Jessica. The first question that I have for you is what is the regulatory position now for UK solicitors wishing to fly in and fly out of Switzerland.

Nina's pretty helpfully sets out that the registration system hasn't changed. This means it's relatively flexible, which is great. So it means that UK lawyers flying in and out of Switzerland can advise on UK law, international law and EU law on a temporary basis, so fly in, fly out.



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Thank you. Are there any conditions or restrictions attached to the scope of permitted practice?

I think it's probably worth just flagging that the temporary practice for foreign lawyers such as fly in, Fly out isn't governed by federal law, that's my understanding.

So it means that different cantons could have different provisions relating to practicing rights. So, for example, in Geneva, the Department of Security, Employment and Health may authorize a foreign lawyer to assist a party before the courts of the canton.

I think that will be decided on a case by case basis and the lawyer would need a certificate issued by the competent authority of their home country will be able to guarantee good reputation and might need to be able to prove their competency of the French language and reciprocity might also be needed.

If we compare that to other cantons, looking at for example, Zurich, I don't think the provisions are as detailed at this point in time.

Thank you.

Last question for you, will LPP apply?

So legal professional privilege, the position remain quite unclear on this. So a decision by the Swiss Federal Tribunal held that communications of persons with lawyers admitted to practice in jurisdictions outside of the EU and EFTA are not protected from seizure unless the person is a target of a criminal investigation.

But it is not entirely clear, for example, whether UK lawyers may be included within the EU and EFTA lawyer categories. So at this point in time, the position on LPP remains slightly unclear.



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Thank you, Jessica.

We've now come to the end of this session. I want to thank you Nina from Blue Lake Legal and my colleague Jessica, a partner in our Regulatory team for your time. I do hope that you found this session helpful. Do you feel free to contact us if you have any questions in relation to our FIFO videos and thank you again for your time.